

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SEA STAR LINE, LLC,  
a limited liability company,

Plaintiff,

-vs-

EMERALD EQUIPMENT LEASING,  
INC., a corporation,

Defendant/Plaintiff  
on the Counterclaim

-vs-

SEA STAR LINE, LLC

Defendant on the  
Counterclaim

CIVIL ACTION

Case No. 05-CV-00245-(JJF)

**APPENDIX TO EMERALD EQUIPMENT LEASING, INC.'S ANSWERING  
BRIEF IN OPPOSITION TO SEA STAR LINE, LLC'S MOTION TO DISMISS  
EMERALD EQUIPMENT LEASING, INC.'S COUNTERCLAIM**

ADELMAN LAVINE GOLD AND LEVIN,  
A Professional Corporation  
Bradford J. Sandler, Esq. (No. 4142)  
Jonathan M. Stemerman, Esq (No. 4510)  
919 North Market Street, Suite 710  
Wilmington, DE 19801  
302-654-8200

-and-

Gary M. Schildhorn, Esq.  
Alan I. Moldoff, Esq.  
Suite 900, Four Penn Center  
Philadelphia, PA 19103-2808  
215-568-7515  
Counsel for Emerald Equipment Leasing,  
Inc.

May 31, 2005

**TABLE OF CONTENTS**

Chapter 11 Bankruptcy Petition of Emerald Equipment Leasing, Inc.....	B1
Sea Star Action Filed in Puerto Rico.....	B3
Letter Dated May 13, 2005 from Counsel to Sea Star in Puerto Rico Action to Counsel for Emerald.....	B9
Letter from Counsel to Emerald Dated May 16, 2005 to Counsel for Sea Star in Puerto Rico Action.....	B10
Voluntary Dismissal of Puerto Rico Action.....	B12
Sea Star's Response to Emerald's First Request for Admissions.....	B15
<u>Western Electric Co. v. Components, Inc.</u> , 1970 WL 458 (Del. Ch. Dec. 7, 1970).....	B25
<u>Pinkert v. Olivieri, P.A.</u> , 2001 WL 641737 (D. Del. May 24, 2001).....	B28
<u>F/V Robbins Nest v. Atlantic Marine Diesel, Inc.</u> , 1994 WL 594592 (D. N.J. Oct. 24, 1994).....	B35

3/29/2001 11:46 FAX 6524132

Cannon Laser E

010/028

BK

01-0934

United States Bankruptcy Court District of Delaware		Voluntary Petition																																																														
Name of Debtor (if individual, enter Last, First Middle): <b>EMERALD EQUIPMENT LEASING, INC.</b>	Name of Joint Debtor (Spouse) (Last, First, Middle): <b>NONE</b>																																																															
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):																																																															
Soc. Sec./ Tax I.D. No. (if more than one, state all): <b>52-2063877</b>	Soc. Sec./Tax I.D. No. (if more than one, state all):																																																															
Street Address of Debtor (No. & Street, City, State & Zip Code): <b>101 SOUTH KING STREET GLOUCESTER CITY, NJ 08030</b>	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):																																																															
County of Residence or of the Principal Place of Business: <b>CAMDEN</b>	County of Residence or of the Principal Place of Business:																																																															
Mailing Address of Debtor (if different from street address): <b>P.O. Box 8698 PHILADELPHIA, PA 19101</b>	Mailing Address of Joint Debtor (if different from street address):																																																															
Location of Principal Assets of Business Debtor (if different from street address above): <b>SAN JUAN, PR; PHILADELPHIA, PA; JACKSONVILLE, FL</b>																																																																
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>																																																																
Venue (Check any applicable box) <input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.																																																																
Type of Debtor (Check all boxes that apply) <input type="checkbox"/> Individual(s) <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other	<input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker	Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13																																																														
Nature of Debts (Check one box) <input type="checkbox"/> Consumer/Non-business <input checked="" type="checkbox"/> Business	Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.																																																															
Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)																																																																
Statistical/Administrative Information (Estimates only) <input checked="" type="checkbox"/> Debtor estimates that value will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.																																																																
<table border="1"> <thead> <tr> <th colspan="2">Estimated Number of Creditors (on a consolidated basis)</th> <th colspan="6">Estimated Assets*</th> <th colspan="6">Estimated Debts*</th> </tr> <tr> <th colspan="2"></th> <th>1-15</th> <th>16-49</th> <th>50-99</th> <th>100-199</th> <th>200-999</th> <th>1000-over</th> <th>\$0 to \$50,000</th> <th>\$50,001 to \$100,000</th> <th>\$100,001 to \$500,000</th> <th>\$500,001 to \$1 million</th> <th>\$1,000,001 to \$10 million</th> <th>\$10,000,001 to \$50 million</th> <th>\$50,000,001 to \$100 million</th> <th>More than \$100 million</th> </tr> </thead> <tbody> <tr> <td colspan="2"></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="2"></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>			Estimated Number of Creditors (on a consolidated basis)		Estimated Assets*						Estimated Debts*								1-15	16-49	50-99	100-199	200-999	1000-over	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Estimated Number of Creditors (on a consolidated basis)		Estimated Assets*						Estimated Debts*																																																								
		1-15	16-49	50-99	100-199	200-999	1000-over	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million																																																	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																																																	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																																																	
* May reflect material intercompany assets and liabilities																																																																

FILED/RECEIVED  
 MAR 21 8 00 AM '01  
 U.S. BANKRUPTCY COURT  
 DISTRICT OF DELAWARE

**Voluntary Petition***(This page must be completed and filed in every case)*

Name of Debtor(s):

Page 2

**Emerald Equipment Leasing, Inc.****Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheets)**

Location

Where Filed: **NONE**

Case Number:

Date Filed:

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)**

Name of Debtor:

**SEE ATTACHMENT B**

Case Number:

Date Filed

District:

Relationship:

Judge:

**Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X Not Applicable**

Signature of Debtor

**X Not Applicable**

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**X**

Signature of Authorized Individual

**John A. Evans**

Printed Name of Authorized Individual

**Corporate General Counsel**

Title of Authorized Individual

**March 20 2001**

Date

**Signature of Attorney**

Signature of Attorney for Debtor(s)

**Laura Davis Jones, Esq.**

Printed Name of Attorney for Debtor(s)

**Pachulski, Stang, Ziehl, Young & Jones P.C.**

Firm Name

**919 North Market Street**

Address

**Wilmington, Delaware 19801****(302) 652-4100**

Telephone Number

**March 21, 2001**

Date

**Signature of Non-Attorney Petition Preparer**

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

**Not Applicable**

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

**X Not Applicable**

Signature of Bankruptcy Petition Preparer

Date

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g. forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☒ Exhibit A is attached and made a part of this petition.**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have formed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

**X**

Signature of Attorney for Debtor(s)

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

B2

SENT BY: HP LASERJET 3130;

858 000 0000;

MAY 12 05

P.1

PAGE 2

May 12 05 12:10p

carl

215 826 8010

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
 TRIBUNAL DE PRIMERA INSTANCIA  
 SALA SUPERIOR DE SAN JUAN

SEA STAR LINE, LLC

Demandante,

Vs.

EMERALD EQUIPMENT LEASING, INC.

Demandada.

CIVIL NUM.

SOBRE:

VENTA JUDICIAL Y  
COBRO DE DINERO

## EMPLAZAMIENTO:

ESTADOS UNIDOS DE AMERICA, }  
 EL PRESIDENTE DE LOS ESTADOS UNIDOS. } SS.  
 EL ESTADO LIBRE ASOCIADO DE PUERTO RICO }

A: EMERALD EQUIPMENT LEASING, INC.  
 P/C Thomas Hol, Sr.  
 10710 Blicott Road  
 Philadelphia, PA 19154

o sea la parte demandada arriba mencionada.

POR LA PRESENTE se le emplaza y requiere para que notifique al Licenciado:

LCDR. IAN P. CARVAJAL  
 LCDR. MANUEL SOSA BÄRZ  
 SALDAÑA & CARVAJAL, P.S.C.  
 1225 PONCE DE LEÓN  
 VIG TOWER - SUITE 702  
 SAN JUAN, PUERTO RICO 00907  
 Tel. (787) 289-9250  
 Fax. (787) 289-9253

abogado del demandante, cuya dirección es la aquí indicada, con copia de su Demanda, que se le entrega en este acto, dentro de los veinte (20) días de haber sido diligenciado este Emplazamiento, si se hiciera en la isla de Puerto Rico; y dentro de los treinta (30) días si se hiciera fuera de Puerto Rico, excluyéndose el día del diligenciamiento. Se le apercibe que en caso de usted no hacerlo, se podrá dictar Sentencia en rebeldía en contra suya, conculcando el remedio solicitado en la Demanda.

EXPEDIDO BAJO MI FIRMA y el Sello del Tribunal, hoy día de de 2005.

Secretario

POR:

Sdo - Secretario

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
TRIBUNAL DE PRIMERA INSTANCIA  
SALA SUPERIOR DE SAN JUAN

SEA STAR LINE, LLC

Demandante,

Vs.

EMERALD EQUIPMENT LEASING, INC.

Demandada.

CIVIL NUM.

SOBRE:

VENTA JUDICIAL Y  
COBRO DE DINERO

VS  
NPR 22 21:31

INSTITUCION

DEMANDA

AL HONORABLE TRIBUNAL:

COMPARECE la parte demandante, Sea Star Line, LLC (en adelante denominada "Sea Star") representada por el abogado que suscribe, y muy respetuosamente EXPONE, ALEGA Y SOLICITA:

1. Sea Star es una corporación de responsabilidad limitada organizada de acuerdo a las leyes de Delaware, dedicada a la transportación de carga por mar y a la operación de un terminal marítimo. La dirección postal de su agente en Puerto Rico (Sea Star Line Agency, Inc.) es P.O. Box 195461, San Juan, Puerto Rico 00919-5461.
2. Emerald Equipment Leasing, Inc. (en adelante "Emerald") es una corporación organizada de acuerdo a las leyes de una jurisdicción que no es el Estado Libre Asociado de Puerto Rico, y la cual en todo momento pertinente a las alegaciones de esta Demanda, se dedicó al arrendamiento de furgones de carga. La última dirección conocida de Emerald es 101 South King Street, Gloucester City, NJ 08030.

I. HECHOS

3. Sea Star adquirió el 26 de abril de 2002 algunos los activos de la compañía conocida como NPR, Inc. Los activos incluían varios buques de carga, así como el uso

B4



May 12 05 12:11p carl

215 828 8010

p.3

Demanda  
Página 2

- preferencial de varios muelles y el uso exclusivo de ciertas tierras aledañas a los muelles de Puerto Nuevo.
4. La adquisición se llevó a cabo como parte de la liquidación de NPR, Inc., la cual se encontraba acogida a la protección del Tribunal de Quiebras de los Estados Unidos, Distrito de Delaware, casos consolidados núm. 01-00926 al 01-00950 (MPW).
  5. Al momento de decretarse la venta de activos, Emerald le tenía arrendado a NPR, Inc. múltiples furgones y chasis. Algunos de éstos se encontraban en las facilidades portuarias de NPR, Inc. en Puerto Nuevo (ahora propiedad de Sea Star), y otros se encontraban a bordo de varios de los buques de carga también adquiridos por Sea Star.
  6. La Orden de venta requería que Sea Star le permitiera a Emerald, o a cualquier otro acreedor de NPR, Inc., acceso a las nuevas facilidades de Sea Star para remover cualquier equipo arrendado a NPR, Inc. El acceso a la propiedad de Sea Star debía ser durante las horas regulares de negocio, siempre y cuando la remoción de dicho equipo no causara un estorbo a las operaciones de la parte compareciente.
  7. Luego de consumada la venta, furgones y chasis de Emerald que se encontraban a bordo de los barcos fueron descargados y almacenados en el terminal de Sea Star en Puerto Nuevo.
  8. Los oficiales y/o agentes de Emerald tenían acceso a dicho equipo y el mismo no se encontraba bajo el dominio y control exclusivo de Sea Star.
  9. El 17 de octubre del año 2003, Sea Star le requirió por escrito a Emerald que removiera el equipo de las facilidades de Sea Star en o antes del primero de

B5

Demanda  
Página 3

diciembre del año 2003. Sin embargo, Emerald nunca removió el equipo según solicitado.

10. Al presente, el inventario de equipo consta de 37 chasis y 17 furgones. También hay varios otros chasis que se sospecha puedan pertenecer a Emerald. Ver listado de equipo anejado como EXHIBIT 1.
11. La ocupación y uso del espacio del terminal de Sea Star por parte de los furgones y chasis de Emerald le está causando a Sea Star serios inconvenientes al no poder utilizar ese espacio para sus propias operaciones.

**II. PRIMERA CAUSA DE ACCION  
SOLICITUD DE ORDEN**

12. Emerald ha abandonado el equipo el cual se encuentra en un grave estado de deterioro y no se anticipa que tengan ningún valor comercial. Sin embargo, la permanencia de este equipo en las facilidades de Sea Star le está causando graves inconvenientes y daños al no permitirle utilizar esos espacios para sus propias operaciones.
13. Por lo tanto, la parte compareciente respetuosamente solicita de este Honorable Tribunal que le ordene a Emerald a remover su equipo de las facilidades de Sea Star y apercibirle, que de no hacerlo en un término razonable, el equipo se venderá en pública subasta. El dinero que genere tal subasta, si alguno, será depositado en el Tribunal para el eventual pago de una sentencia en este caso la cual debe incluir todos los gastos relacionados con la remoción del equipo.

**III. SEGUNDA CAUSA DE ACCION**

12. Emerald no ha pagado los cargos de almacenamiento y manejo del equipo antes mencionados desde el mes de enero de 2004.



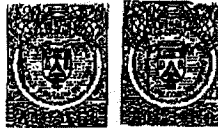
Demanda  
Pagina 4

13. Hasta el pasado mes de marzo del 2005, Emerald le debía a Sea Star la cantidad de \$27,890.00, la cual no ha sido satisfecha hasta el momento. Esta cantidad aumenta conforme pasa el tiempo.
14. Por tal motivo, Sea Star respetuosamente le solicita a este Honorable Tribunal que dicte Sentencia condenando a Emerald al pago de los gastos de almacenamiento y manejo que al presente han sido calculados como ascendentes a \$27,890.00, más los gastos adicionales que sean calculados hasta el momento en que este Honorable Tribunal emita la orden solicitada, más intereses, costas y honorarios de abogado por \$1,000.00.

POR TODO LO ANTES EXPUESTO, la parte demandada, Sea Star Linc, LLC, respetuosamente solicita que este Honorable Tribunal decrete CON LUGAR la presente Demanda y en su consecuencia, emita una Orden para la remoción y/o venta en pública subasta de los equipos antes mencionados y que también dicte Sentencia condenando a Emerald al pago de los gastos de almacenamiento, manejo, remoción, costas y honorarios de abogado.

RESPECTUOSAMENTE SOMETIDO.


En San Juan, Puerto Rico, hoy día 22 de abril de 2005.



BALDAÑA & CARVAJAL, P.S.C.  
VIG Tower - Suite 702  
Ave. Ponce de León 1225  
San Juan, P.R. 00907  
Tel. (787) 289-9250  
Fax. (787) 289-9253



  
IAN P. CARVAJAL  
Colegiado Núm. 12115

  
MANUEL SOSA  
Colegiado Núm. 15312

**CERTIFICADO DE DILIGENCIAMIENTO DEL ALCUACIL**

CERTIFICO: Que recibí este emplazamiento el día \_\_\_\_\_ de \_\_\_\_\_ de 2005, notificándolo personalmente a \_\_\_\_\_ o sea, el demandado mencionado en dicho emplazamiento, el día \_\_\_\_\_ de 2005, a las \_\_\_\_\_ de la \_\_\_\_\_, en \_\_\_\_\_, Puerto Rico, entregándole personalmente copia de la Demanda presentada y copia de este emplazamiento, al dorso de la cual hice constar bajo mi firma la fecha y sitio de entrega y notificación. Fechado hoy día \_\_\_\_\_ de \_\_\_\_\_ de 2005 en \_\_\_\_\_, Puerto Rico.

Alguacil

POR: \_\_\_\_\_  
Alguacil - Auxiliar

**DILIGENCIAMIENTO POR PERSONA PARTICULAR**

Yo \_\_\_\_\_, previamente juramentado, DECLARO:

Que me llamo como queda dicho, soy mayor de 21 años de edad; sé leer y escribir; y no soy abogado del demandante en este asunto, ni parte en este pleito, no teniendo tampoco interés en el mismo.

Que recibí este emplazamiento el día \_\_\_\_\_ de \_\_\_\_\_ de 2005, notificándolo personalmente a \_\_\_\_\_ o sea, el demandado mencionado en dicho emplazamiento, el día \_\_\_\_\_ de 2005, a las \_\_\_\_\_ de la \_\_\_\_\_, en \_\_\_\_\_, Puerto Rico, entregándole personalmente copia de la Demanda presentada y copia de este Emplazamiento, al dorso de la cual hice constar bajo mi firma la fecha y sitio de entrega y notificación.

\_\_\_\_\_  
Diligenciante

Jurado y suscrito ante mí por \_\_\_\_\_ quien es mayor de 21 años de edad, \_\_\_\_\_, y vecino de \_\_\_\_\_, Puerto Rico, hoy día \_\_\_\_\_ de \_\_\_\_\_ de 2005.

NOTARIO PUBLICO

LUIS N. SALDAÑA  
IAN P. CARVAJAL\*

FRANCES R. COLÓN  
MANUEL SOSA  
FRANCISCO J. VIZCARRONDO  
ANTONIO BAYÓN\*  
FRANCISCO M. VIEJO

\*ALSO ADMITTED IN THE  
STATE OF LOUISIANA

\*ALSO ADMITTED IN THE  
STATE OF FLORIDA

**SALDAÑA & CARVAJAL, P.S.C.**

ATTORNEYS AND COUNSELLORS AT LAW

VIG Tower - Suite 702  
1225 Ponce de León Avenue  
San Juan, Puerto Rico 00907  
Telephone: (787) 289-9250  
Fax: (787) 289-9253  
www.saldanacarvajal.com

Associated office in New York  
One Battery Park Plaza  
New York, NY 10004-1486  
Telephone: (212) 804-4200  
Fax: (212) 344-8066

Email: [saldanaromanl@microjuris.com](mailto:saldanaromanl@microjuris.com)  
[carvajallan@microjuris.com](mailto:carvajallan@microjuris.com)  
[francesr@microjuris.com](mailto:francesr@microjuris.com)  
[sosam@microjuris.com](mailto:sosam@microjuris.com)  
[fvizcarrondo@microjuris.com](mailto:fvizcarrondo@microjuris.com)  
[abayon@microjuris.com](mailto:abayon@microjuris.com)  
[viejof@microjuris.com](mailto:viejof@microjuris.com)

May 13, 2005

**VIA TELEFAX 1-215-557-7922**

Alan I. Moldoff, Esq.  
Adelman, Lavine, Gold and Levy  
Suite 901  
Four Penn Center  
Philadelphia, PA 19103-2808

Re: Sea Star Line, LLC v. Emerald Equipment Leasing, Inc.  
Court of First Instance, San Juan Part/Division  
Civil Action No. KAC 05-2971  
Our file: 32-2/032.

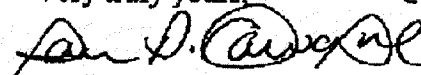
Dear Mr. Moldoff:

We are in receipt of your letter dated yesterday. I can confirm that the apparent pleading to which you refer is in fact in Spanish and a Complaint before the Court of First Instance of the Commonwealth of Puerto Rico. I'm sorry to inform you that we will not provide you with a translation. To answer your next question, service of process was done in a manner allowed by our Rules of Civil Procedure.

As a matter of courtesy, I am advising you that the Complaint seeks an order from the Court commanding Emerald to remove the equipment it abandoned in the premises of Sea Star and alternatively, an order for the interlocutory sale of the equipment. Sea Star also seeks payment of approximately \$28,000.00 for the overdue storage charges of the mentioned equipment.

Please govern yourselves accordingly. With nothing further, we remain,

Very truly yours,



**SALDAÑA & CARVAJAL, P.S.C.**  
Ian P. Carvajal

ADELMAN LAVINE GOLD AND LEVIN

A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW

LEWIS H. GOLD  
ROBERT H. LEVIN  
GARY M. SCHILDHORN  
BARRY D. KLEBAN  
GARY D. BRESSLER  
STEVEN D. USDIN  
RAYMOND H. LEMISCH  
LEON R. BARSON  
WILLIAM R. HINCHMAN  
ALAN I. MOLDOFF  
KATHLEEN E. TORBIT  
BRADFORD J. SANDLER  
MARK PFEIFFER  
ANNE R. MYERS  
D. ANDREW BERTORELLI, JR.  
JENNIFER R. HOOVER  
ALEXANDER MORETSKY  
JONATHAN M. STEMERMAN

SUITE 900  
FOUR PENN CENTER  
PHILADELPHIA, PA 19103-2808  
(215) 568-7515

FACSIMILE (215) 557-7922  
lawyers@adelmanlaw.com

SUITE 710  
919 NORTH MARKET STREET  
WILMINGTON, DE 19801  
302-654-8200

May 16, 2005

**BY TELECOPIER (787-289-9253)**

Ian P. Carvajal, Esquire  
Saldana & Carvajal, P.S.C.  
VIG Tower – Suite 702  
Ave. Ponce de Leon 1225  
San Juan, P.R. 00907

**Re: Emerald Equipment Leasing, Inc.; Bankruptcy No. 01-00934 (MFW)  
Sea Star Line, LLC v. Emerald Equipment Leasing, Inc.  
USDC, District of Delaware; Civil Action No. 1:05-CV-00245-UNA**

Dear Mr. Carvajal:

I am in receipt of your letter dated May 13, 2005 regarding the lawsuit you instituted on behalf of Sea Star Line, LLC ("Sea Star") against Emerald Equipment Leasing, Inc. ("Emerald") in the Court of First Instance of the Commonwealth of Puerto Rico. In your letter, you indicated that the subject of the lawsuit you filed (for which you have refused to provide an English translation), involves equipment which you assert is Emerald's property.

As I indicated to you in my prior letter dated May 12, 2005, it appears that the claim you have instituted on behalf of Sea Star against Emerald is already encompassed by prior litigation instituted by Sea Star in the United States District Court for the Middle District of Florida. As such, the filing of the lawsuit in Puerto Rico can only be viewed as abusive.

Moreover, as I am sure you are aware, Emerald is currently a debtor-in-possession, having filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on March 21, 2001. Accordingly, you should be aware that the United States Bankruptcy Code, specifically, 11 U.S.C. Section 362 provides, inter alia, that the filing of a bankruptcy petition operates as a stay, applicable to all entities of, among other

B10

Ian P. Carvajal, Esquire

May 16, 2005

Page 2

things, any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. You should be further aware that any entity violating the "automatic stay" provided by 11 U.S.C. Section 362, may be subject to sanctions.

The suit you filed on behalf of Sea Star in Puerto Rico clearly constitutes an act to exercise control over property of Emerald's bankruptcy estate. This is intentional, and, in light of the prior litigation, abusive. Accordingly, the suit you filed in Puerto Rico should be withdrawn immediately. Please advise me as to your intentions in this regard by the close of business today. Otherwise, I will take the appropriate action either in the United States Bankruptcy Court for the District of Delaware, or the United States District Court for the District of Delaware, seeking sanctions against both your law firm and Sea Star.

Thank you very much.

Very truly yours,



ALAN I. MOLDOFF

AIM:md

cc: Emerald Equipment Leasing, Inc.  
Gary M. Schildhorn, Esquire

g:\393\10\letters\carvajal

**Moldoff, Alan**

---

**From:** Ian P. Carvajal [carvajalian@microjuris.com]  
**Sent:** Tuesday, May 24, 2005 6:57 PM  
**To:** Moldoff, Alan  
**Subject:** RE: Sea Star v. Emerald; Our file: 32-2/032.

Dear Mr. Moldoff:

Attached please find a copy of the Notice of Voluntary Dismissal.

Sincerely,

*Ian P. Carvajal*  
Saldaña & Carvajal, P.S.C.  
VIG Tower, Suite 702  
1225 Ponce de Leon Ave.  
San Juan, P.R. 00907  
Tel: 787-289-9250  
Fax: 787-289-9253

---

**From:** Moldoff, Alan [mailto:amoldoff@adelmanlaw.com]  
**Sent:** Tuesday, May 17, 2005 9:22 AM  
**To:** Ian P. Carvajal  
**Subject:** RE: Sea Star v. Emerald; Our file: 32-2/032.

I will resend fax - but I must have prompt response. Thanks.

-----Original Message-----

**From:** Ian P. Carvajal [mailto:carvajalian@microjuris.com]  
**Sent:** Monday, May 16, 2005 6:49 PM  
**To:** Moldoff, Alan  
**Subject:** Sea Star v. Emerald; Our file: 32-2/032.

Dear Mr. Moldoff:

Thank you for your fax of today. The first page was illegible. I will appreciate if you send it again.

Sincerely,

*Ian P. Carvajal*  
Saldaña & Carvajal, P.S.C.  
VIG Tower, Suite 702  
1225 Ponce de Leon Ave.  
San Juan, P.R. 00907  
Tel: 787-289-9250  
Fax: 787-289-9253

5/25/2005

B12



ESTADO LIBRE ASOCIADO DE PUERTO RICO  
TRIBUNAL DE PRIMERA INSTANCIA  
SALA SUPERIOR DE SAN JUAN

SEA STAR LINE, LLC

Demandante,

Vs.

EMERALD EQUIPMENT LEASING, INC.

Demandada.

CIVIL NUM. KAC 05-2971 (508)

SOBRE:

VENTA JUDICIAL Y  
COBRO DE DINERO

MOCIÓN DE DESISTIMIENTO VOLUNTARIO SIN PERJUICIO

AL HONORABLE TRIBUNAL:

COMPARECE el demandante, SEA STAR LINE, LLC, por conducto de los abogados que suscriben, y muy respetuosamente EXPONE Y SOLICITA:

1. La parte demandante, SEA STAR LINE, LLC, desiste sin perjuicio de la reclamación contenida en la Demanda de epígrafe, sin especial imposición de costas, gastos ni honorarios de abogados a favor de ninguna de las partes, todo conforme establece la Regla 39.1 (a)(1) de las de Procedimiento Civil vigentes.
2. La parte demandada, a pesar de haber sido debidamente emplazada, aún no ha contestado la Demanda de epígrafe.

POR TODO LO CUAL, la parte demandante, SEA STAR LINE, LLC, muy respetuosamente solicita de este Honorable Tribunal que tome conocimiento de lo anteriormente expuesto.

RESPECTUOSAMENTE SOMETIDO.

En San Juan, Puerto Rico, hoy día 20 de mayo de 2005.

Desistimiento Voluntario Sin Perjuicio  
Página 2.



SALDAÑA & CARVAJAL, P.S.C.  
VIG Tower - Suite 702  
Ave. Ponce de León 1225  
San Juan, P.R. 00907  
Tel. (787) 289-9250  
Fax. (787) 289-9253

IAN P. CARVAJAL  
Colegiado Núm. 12115

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

CASE NO. 3:04-CV-146-99HTS

SEA STAR LINE, LLC,  
a limited liability company,

Plaintiff,

-vs-

EMERALD EQUIPMENT LEASING, INC.,  
a corporation,

Defendant.

SEA STAR LINE, LLC RESPONSE TO DEFENDANT'S  
FIRST REQUEST FOR ADMISSIONS

Pursuant to the applicable Federal Rules of Civil Procedure, Plaintiff, SEA STAR LINE, LLC ("Sea Star"), in response to the Request for Admissions served by Defendant, EMERALD EQUIPMENT LEASING, INC. ("Emerald"), says:

1. Admit that a binding agreement existed between Sea Star and Emerald relating to the equipment made the subject matter of this litigation (hereinafter the "Emerald Equipment") that was agreed to by Sea Star and Emerald on or about May 2, 2002 (the "Oral Agreement").

ANSWER: Sea Star admits that a binding agreement relating to Emerald equipment exists between Sea Star and Emerald but denies the agreement was an "Oral Agreement" that "was agreed to by Sea Star and Emerald on or about May 2, 2002."

2. Admit that the document attached hereto as Exhibit "A" is a true and correct copy of an e-mail communication between Sea Star and Emerald relating to the Oral Agreement.

ANSWER: Sea Star denies Request No. 2.

3. Admit that Exhibit "A" reflects the basic terms and conditions of the Oral Agreement.

ANSWER: Sea Star denies Request No. 3. The e-mail does outline some of the written terms incorporated in the Equipment Rental Agreement dated as of July 31, 2002, which expressly states that it contains the entire agreement between the parties.

4. Admit that, pursuant to the Oral Agreement, Sea Star used the Emerald Equipment.

ANSWER: Sea Star denies Request No. 4.

5. Admit that Sea Star and NPR, Inc. ("NPR") entered into an agreement for the sale of NPR assets to Sea Star, which sale took place on or about April 26, 2002.

ANSWER: Sea Star admits that Sea Star and NPR entered into an agreement for sale of certain NPR assets to Sea Star pursuant to an Order Authorizing Sale of the NPR Assets Free and Clear of all Liens, Claims and Encumbrances, dated April 26, 2002 but denies that closing occurred on April 26, 2002.

6. Admit that, pursuant to the sale of assets by NPR to Sea Star on or about April 26, 2002 (the "NPR Sale"), Sea Star came into possession of the Emerald Equipment located on vessels

formerly owned by NPR, and which vessels were sold to Sea Star.

ANSWER: Sea Star admits that Sea Star came into possession of certain Emerald equipment on vessels formerly owned by NPR pursuant to an Order Authorizing Sale of the NPR Assets Free and Clear of all Liens, Claims and Encumbrances, dated April 26, 2002, when closing occurred on April 27, 2002. Sea Star denies Request No. 6 to the extent that Emerald intends any other meaning for "NPR Sale".

7. Admit that Sea Star did not notify Emerald in writing at any time within thirty (30) days after the NPR Sale of any Emerald Equipment that Sea Star had stored, which equipment Emerald had previously been leasing to NPR just prior to the NPR Sale.

ANSWER: Sea Star admits Request No. 7. To Sea Star's knowledge, however, Emerald representatives received notifications as to storage of Emerald equipment in bankruptcy court hearings and orders and through representatives of other Debtors, such as NPR, Inc.

8. Admit that Sea Star and Emerald entered into a written agreement relating to the Emerald Equipment that was executed on or about July 31, 2002 (the "Equipment Rental Agreement").

ANSWER: Sea Star admits that Sea Star and Emerald entered into a written agreement relating to Emerald equipment but denies that the parties executed the document on or about July 31, 2002. The Equipment Rental Agreement is dated as of July 31, 2002 but was executed in September 2002.

9. Admit that the Equipment Rental Agreement related to the use of the Emerald Equipment by Sea Star beginning on or about April 29, 2002.

ANSWER: Sea Star admits Request No. 9, subject to NPR-Sea Star agreements, MBC-Sea Star agreements, and court orders.

10. Admit that Sea Star was responsible for payments to Emerald for the use of any Emerald Equipment pursuant to the Equipment Rental Agreement and the Oral Agreement for any month that Sea Star first used such piece of equipment and for all months thereafter until said piece of equipment was redelivered to Emerald.

ANSWER: Sea Star denies Request No. 10.

11. Admit that Sea Star was permitted to return or redeliver Emerald Equipment to Emerald to the following locations only: Greenwich Terminal, Philadelphia, Pennsylvania; Sea Star Terminal, Puerto Nuevo, San Juan, Puerto Rico; Greenwich Terminal, Port of Jacksonville, Florida; and any other location as to which the parties have agreed in writing.

ANSWER: Sea Star admits Request No. 11 for the period after July 31, 2002 but denies Request No. 11 for the period before August 1, 2002. To Sea Star's knowledge, Greenwich Terminal had no agreement with Jaxport for space allocation at the Port of Jacksonville, Florida before August 1, 2002. Furthermore, Sea Star and Emerald executed the Equipment Rental Agreement dated as of July 31, 2002 in September 2002.

12. Admit that Sea Star and Emerald did not agree in



writing to the return or redelivery of Emerald Equipment to any location other than the specific locations referenced in Paragraph 11, *supra*, except when the parties agreed that a specific piece of Emerald Equipment would be sold to a third party at a specific location.

ANSWER: Sea Star admits Request No. 12 for the period after July 31, 2002 but denies Request No. 12 for the period before August 1, 2002.

13. Admit that Sea Star's obligation to pay for the use of Emerald Equipment, after Sea Star's use of such equipment, did not end upon Sea Star's (re)delivery of the Emerald Equipment to third parties.

ANSWER: Sea Star objects to Request No. 13. Said Request is overbroad and does not disclose Emerald's meaning of "Sea Star's (re)delivery of the Emerald Equipment to third parties".

14. Admit that Sea Star attempted to redeliver and/or did redeliver Emerald Equipment that Sea Star used for less than thirty (30) days.

ANSWER: Sea Star admits Request No. 14.

15. Admit that Sea Star was permitted to return or redeliver Emerald Equipment only by way of a written document executed by both Sea Star and Emerald.

ANSWER: Sea Star denies Request No. 15.

16. Admit that on or about November 1, 2003, counsel for Sea Star received notice from Emerald's counsel that Emerald intended to

terminate the Equipment Rental Agreement, effective as of November 30, 2003 (the "Termination Letter").

ANSWER: Sea Star admits Request No. 16.

17. Admit that, pursuant to the Termination Letter, Sea Star was required to redeliver all Emerald Equipment in its possession no later than December 1, 2003.

ANSWER: Sea Star denies Request No. 17.

18. Admit that manifests were prepared by or on behalf of Sea Star for shipments of equipment and/or cargo by Sea Star vessels.

ANSWER: Sea Star admits Request No. 18.

19. Admit that manifests were prepared by or on behalf of Sea Star for shipments of equipment and/or cargo by vessels chartered by Sea Star.

ANSWER: Sea Star admits Request No. 19.

20. Admit that the manifests prepared by or on behalf of Sea Star for shipments of equipment and/or cargo on Sea Star vessels, vessels chartered by Sea Star, and/or slots chartered by Sea Star on other vessels would reflect usage of the Emerald Equipment by Sea Star.

ANSWER: Sea Star denies Request No. 20. Manifests prepared by or on behalf of Sea Star would reflect not only usage of equipment by Sea Star but also shipments of equipment for Emerald or for third parties.

21. Admit that Sea Star purchased slot charters onboard vessels from April 26, 2002 through December 1, 2003.

ANSWER: Sea Star denies Request No. 21. Sea Star entered into transportation services agreements with other ocean carriers but did not purchase slot charters onboard vessels.

22. Admit that manifests or other records were prepared by or on behalf of Sea Star relating to all equipment shipped aboard vessels on which Sea Star purchased slot charters.

ANSWER: Sea Star denies Request No. 22.

23. Admit that beginning on April 26, 2002 and ending on December 1, 2003, when Emerald Equipment appeared on a manifest prior to its redelivery to Emerald or sale to a third party, it evidenced use of Emerald Equipment by Sea Star.

ANSWER: Sea Star objects to Request No. 23. Said Request is overbroad and does not specify any equipment or identify any "sale" or "third party" to which the Request refers. Without waiving its objection, Sea Star denies Request No. 23.

24. Admit that beginning on April 26, 2002 and ending on December 1, 2003, when Emerald Equipment appeared on a gate record prior to its redelivery to Emerald or sale to a third party, it evidenced use of Emerald Equipment by Sea Star.

ANSWER: Sea Star objects to Request No. 24. Said Request is overbroad; fails to identify the type of "gate record", the issuer, or any "third party" to which it refers; and fails to specify a proper beginning date. Sea Star gate records beginning April 29, 2002 could evidence not only use of Emerald equipment by Sea Star but also receipt of equipment from third parties, delivery of

equipment, or movement of equipment held in storage.

25. Admit that when Emerald Equipment appeared on a Sea Star "Self Billing Report", it evidenced use of Emerald Equipment by Sea Star.

ANSWER: Sea Star admits Request No. 25 to the extent the Report shows a charge to Sea Star, not a charge by Sea Star.

26. Admit that Sea Star inputted "move histories" directly into the Holt Oversight computer for purposes of tracking Sea Star's use of equipment, including Emerald Equipment.

ANSWER: Sea Star objects to Request No. 26, which fails to identify the "Holt Oversight computer". Without waiving said objection, Sea Star admits that for a short time after the NPR closing, Sea Star purchased Holt Oversight computer services primarily to track and facilitate intermodal shipments and movements of containerized cargo and equipment through certain automated gates.

27. Admit that where the movement of Emerald Equipment between April 26, 2002 and December 1, 2003, was input into the computer application referred to by both Sea Star and Emerald as Emerald Equipment Move History, it evidenced use of Emerald Equipment by Sea Star.

ANSWER: Sea Star denies Request No. 27. Sea Star computer inputs beginning April 29, 2002 could evidence not only use of Emerald equipment by Sea Star but also receipt of Emerald equipment from third parties, delivery of equipment, or movement of

equipment held in storage. Further, Sea Star does not refer to its computer application as "Emerald Equipment Move History".

28. Admit that Sea Star caused Emerald Equipment to be moved, directly or indirectly, to railroad depots.

ANSWER: Sea Star admits Request No. 28.

29. Admit that Sea Star caused Emerald Equipment to be moved, directly or indirectly, to railroad yards.

ANSWER: Sea Star admits Request No. 29.

30. Admit that Sea Star caused Emerald Equipment to be moved, directly or indirectly, to customer pools.

ANSWER: Sea Star admits Request No. 30.

31. Admit that Sea Star caused Emerald Equipment to be moved, directly or indirectly, to truck yards.

ANSWER: Sea Star admits Request No. 31.

32. Admit that any Emerald Equipment that was moved from April 26, 2002 through December 1, 2003 prior to its redelivery to Emerald or sale to a third party, was caused to be moved by Sea Star.

ANSWER: After reasonable inquiry information known or readily obtainable by Sea Star is insufficient to enable Sea Star to admit or deny this Request. Therefore, Sea Star denies Request No. 32.

\* 33. Admit that Sea Star used Emerald Equipment for time periods not included in the self-billing reports prepared by Sea Star.

ANSWER: Sea Star admits Request No. 33.

34. Admit that at no time within thirty (30) days after the NPR Sale did Sea Star notify Emerald that certain Emerald Equipment was seized by third parties in the Dominican Republic.

ANSWER: After reasonable inquiry information known or readily obtainable by Sea Star is insufficient to enable Sea Star to admit or deny this Request at present.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 28 day of October, 2004 to MICHAEL L. GORE, ESQ., Shutts & Bowen LLP, P.O. Box 4956, Orlando, FL 32802-4956 and mailed to GARY M. SCHILDHORN, ESQ. and ALAN I. MOLDOFF, ESQ., Adelman Lavine Gold and Levin, Suite 900, Four Penn Center, Philadelphia, PA 19103-2808.

ARMSTRONG & MEJER, P.A.  
Suite 1111, Douglas Centre  
2600 Douglas Road  
Coral Gables, FL 33134  
Telephone: (305) 444-3355  
Telefax: (305) 442-4300

By: 

TIMOTHY J. ARMSTRONG  
Florida Bar No. 135859

liz\04pldgs\03-3621-025a